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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE TERRITORY OF GUAM

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 vs.

13 NATHAN EARL MCCORD BORJA,

14 Defendant.

CRIMINAL CASE NO. 21-00008

**MOTION TO VACATE TRIAL
SCHEDULING ORDER AND EXCLUDE
TIME PURSUANT TO 18 U.S.C. §
3161(h)(3)(A)**

FILED UNDER SEAL

15 COMES NOW, the United States of America, by and through the undersigned counsel,
16 and hereby moves this Honorable Court for an Order Vacating the Trial Scheduling Order issued
17 on June 6, 2021. ECF No. 6. The Government further requests that the Defendant be declared a
18 fugitive for purposes of excluding time under the Speedy Trial Act. The Defendant has an
19 outstanding arrest warrant for a pretrial release violation petition that was issued by the Court on
20 June 22, 2021. To date, the Defendant has not been apprehended. Under 18 U.S.C. §
21 3161(h)(3)(A), “[a]ny period of delay resulting from the absence or unavailability of the
22 defendant” is considered excludable time. Under this subsection, a defendant is “considered
23 absent when his whereabouts are unknown, and, in addition, he is attempting to avoid
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Motion to Vacate Trial
Scheduling Order & Exclude Time
Pursuant to 18 U.S.C. § 3161(h)(3)(A) - 1

FILED
DISTRICT COURT OF GUAM

JUL 19 2021

JEANNE G. QUINATA
CLERK OF COURT

ORIGINAL



1 apprehension or prosecution or his whereabouts cannot be determined by due diligence.” 18
2 U.S.C. § 3163(h)(3)(B). A defendant is “considered unavailable whenever his whereabouts are
3 known but his presence for trial cannot be obtained by due diligence or he resists appearing at or
4 being returned for trial. Despite efforts by federal law enforcement to apprehend the Defendant,
5 he remains at large. Therefore, the Government respectfully requests that the Court vacate the
6 current trial scheduling order and exclude the time from the issuance of the warrant until such
7 time as the Defendant is apprehended from the Speedy Trial Clock. *See United States v.*
8 *Sandoval*, 990 F.2d 481, 484 (9th Cir. 1993) (“[A] true fugitive, whose location is unknown, or
9 who is successfully resisting government efforts to bring him into the jurisdiction, will not be
10 able to obtain dismissal of an indictment. This is as it should be. Otherwise, the courts would be
11 sanctioning the playing of games by fugitives.”) (quoting *United States v. Salzmann*, 548 F.2d
12 395, 404 (2d Cir. 1976) (Feinberg, J., concurring)).

13 For the reasons set forth above and for good cause shown, the United States requests that
14 this Court vacate the trial scheduling order until the Defendant is apprehended and declare the
15 Defendant a fugitive for the purposes of excluding time under the Speedy Trial Act.

16 RESPECTFULLY SUBMITTED this 19th day of July, 2021.

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18 SHAWN N. ANDERSON
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Districts of Guam and the NMI

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20 By: 

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